

mode of transportation proposed to compensate for any increased risks that would be encountered should the exemption be granted, (5) a schedule of events under the proposal, and (6) a statement setting forth the applicant's analysis of why he believes his proposal will achieve a level of safety at least equivalent to that provided by the regulations or, if there is no regulatory standard, will adequately protect against risks to life and property which are inherent in the transportation of hazardous materials. These were the items of information and the analyses that the Bureau considered necessary for it to properly evaluate a proposal. Notwithstanding the construction assigned to the term "safety analysis" and the intent imputed to § 107 of the Hazardous Materials Transportation Act by the NTSB, the Bureau is of the firm belief that the information gathering and analytical requirements which it proposed with respect to applications for exemptions fulfills the "intent" of § 107 and will provide the Bureau with the information it needs to evaluate the proposals and establish the proper regulatory safeguards in those cases in which an exemption is granted.

In finalizing these regulations, the Bureau has modified items (7) and (9) in the list of required application contents in light of the NTSB comments. Item (7) has been amended to require an applicant to identify increased risks likely to result if an exemption is granted and specify the safety control measures necessary to compensate for them. Item (9), which requires a statement from the applicant as to why he believes his proposal will achieve the required statutory level of safety, has been amended to require that statement to cover the safety control measures proposed by the applicant. These changes, as the NTSB suggested, should help assure that applications focus on the safety problems which need to be considered.

The Bureau, however, cannot fully agree with the NTSB that each applicant should be required to "identify the ways persons could be injured with respect to the quantity and form of the materials to be transported." The NTSB approach applied literally would mean that a recent applicant seeking Bureau approval for a different (and what may well be a better) technique for applying glue in the fabrication of several different styles of hazardous material specification fiberboard boxes would have been confronted with an overwhelming task. One style of the fiberboard boxes alone is used to carry hundreds of different hazardous materials. Under the NTSB proposal, the applicant would have been required to identify the ways persons could be injured with respect to each of those hundreds of hazardous materials. While it is undoubtedly true that "the data derived from this procedure could be used as base data in future risk analysis", it is more likely that the applicant would have abandoned the effort. It is the Bureau's view that the risks to be identified and addressed by the applicant, by those who choose to com-

ment on the application, and by the Bureau staff, are those risks that would arise as a direct result of granting the exemption. In rejecting this part of the NTSB's suggested changes, the Bureau does not mean to give the impression that it finds the suggestion totally without merit. In particular cases, the Bureau foresees requiring an applicant to supply the full range of information which the NTSB would require for all cases. The obtaining of such information on a case-by-case basis is clearly provided for in § 107.109(b) [proposed § 107.11(b)], which may have been overlooked in the formulation of the NTSB's comments.

Recommendation HM-75-1 calls for "a safety analysis statement to accompany applications for exemptions to the Materials Transportation Bureau's regulations." In addition to regulations pertaining to hazardous materials, the Bureau also prescribes and administers regulations under the Natural Gas Pipeline Safety Act of 1968. Although it would appear that the NTSB intended to include those regulations within the coverage of Recommendation HM-75-1, exemptions from those regulations are beyond the scope of this rule making and are governed by a different statutory standard.

Except as stated above, the Bureau is satisfied that the proposed regulations, modified as described in this preamble, reflect and accommodate the NTSB's Recommendations HM-75-1 and HM-75-2. The Bureau also believes that through the public notice and comment procedures being established, the NTSB will be afforded new opportunities to apply its insight and expertise to the matter of the transportation of hazardous materials in commerce.

#### OTHER MATTERS

Two comments addressed the proposed requirement that applications state the composition and percentage of each chemical which is the subject of an exemption application. Both commentators felt that information on traces or insignificant amounts need not be included in an application. One commentator would set the floor at 5%. The Bureau understands and appreciates the commentator's point. While it is prepared to follow a general practice of accepting applications which provide the specified information with respect to all components which make up 1% or more of a mixture or solution, the Bureau believes that making this practice a fixed rule may, on occasion, induce an applicant to omit essential information.

Section 107.109(c) has been modified to accommodate suggestions that an applicant whose application is denied should be given the reasons for the denial.

Comments on the proposed termination and suspension provisions asserted that an exemption should not be subject to suspension for failure of the holder to adhere to its terms unless those terms are "repeatedly violated". The Bureau believes that such a change would effec-

tively negate any therapeutic effect that is otherwise likely to result from the establishment of this sanction. A related suggestion stated that an immediate amendment rather than suspension is the appropriate administrative action to be taken when new information shows that an exemption does not adequately protect against risks to life and property. The Bureau believes that this might be so in some cases. In others, a suspension pending actual determination of an appropriate amendment may be necessary. It was to provide for this flexibility that the proposed suspension provision in question was cast in discretionary terms. The Bureau sees no reason to change it.

One commentator questioned the legality of giving packaging manufacturers, reconditioners, and other similarly situated persons the right to apply for exemptions under the proposed regulations. The commentator stated that through legislative oversight such persons were not expressly mentioned in § 107 of the Hazardous Materials Transportation Act as being potential applicants for exemptions. The commentator also correctly pointed out that a bill (S. 2024, 94th Conf.) on this subject has been introduced in the Senate. That bill had its origins in the Bureau which is of the view that its enactment would merely clarify the matter and that legislative validation of the questioned class of potential applicants is not required. A person's right to petition an agency for relief from a regulation of that agency which directly affects that person is so well established as to be beyond question.

Several editorial adjustments have been made in response to comments and to be consistent with the changes discussed elsewhere in this preamble.

#### EFFECTIVE DATE

Since these amendments establishing new exemption procedures and making related changes to existing regulations are procedural rather than substantive and because of the need for immediate public guidance with respect to the new exemption procedures, they are being made effective in less than 30 days after publication in the FEDERAL REGISTER. As proposed in the notice of proposed rule making issued on July 30, 1975 (40 FR 32758, August 4, 1975), these amendments become effective on October 16, 1975.

#### RELATED CHANGES TO OTHER TITLES

Elsewhere in this edition of the FEDERAL REGISTER, 14 CFR 103.5 is being revoked and 46 CFR 146.02-25 is being amended to conform with the adoption of these new exemption procedures.

In consideration of the foregoing, 49 CFR Subtitle B, Chapter I, is amended as follows:

1. In Subchapter B—Hazardous Materials, a new Part 107 is established to read as follows:

#### PART 107—PROCEDURES

##### Subpart A—General Provisions

Sec.	
107.1	Purpose and scope.
107.3	Definitions.
107.5	Request for confidential treatment.